IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 129 OF 2005
(For quashing)

Ashok Jayantilal Khandwala ...Petitioner

V/s

State of Maharashtra
and anr. ...Respondents.

Mr. V. Kantawala i/b Kantawala & Co. for the Petitioner.

Mr. S.R. Shinde, APP for the State.

Mr. A.H.H. Ponda with Mrs. K. Ankalesaria for the respondent No.2

CORAM: V.M.KANADE,J.

DATE: 2nd May, 2005

P.C.:

1. Heard the learned Counsel for the petitioner and the learned Counsel for respondent No.2.

2. Petitioner is challenging the order of issuance of process on a complaint filed by the complainant under section 138 of the Negotiable Instruments Act.

3. Petitioner is original accused No.3. It is submitted by the learned Counsel appearing on behalf of the petitioner that there is no averment in the statutory demand notice which was issued by the complainant or in the complaint which is filed, attributing any role to the petitioner in respect of

issuance of cheque and, therefore, the petitioner is liable to be discharged and the process is liable to be quashed. He has invited my attention to the statutory demand notice and has submitted that in this notice, in para 1, it is mentioned as follows:-

> "That you No.2 Jatin Ashok Khandwala, No.3. Ashok Jayantilal Khandwala, No.4 Paresh Jayantilal Khandwala are the partners of No.1 firm and you No.5 Mayank Ashok Khandwala are Manager of No.1 firm and are responsible for managing the day to day affairs of the No.1 firm and for the conducts of it's business."

It is further submitted that in para 3, there is a vague reference that accused No.2 in connivance with accused Nos. 3, 4 and 5 issued the cheque on behalf of accused No.1 - firm. He has also invited my attention to the complaint and has submitted that the allegation in the said complaint is absolutely vague.

4. The learned Counsel appearing on behalf of respondent No.2 has submitted that in the statutory demand notice, it is specifically mentioned in the title of the notice that the Petitioner is a partner and person in-charge of and responsible for the

conduct of business of the firm. In para 1 of the notice the words used are as follows:-

"are responsible for managing the day today affairs"

It is submitted that, therefore, the wording clearly includes the petitioner. He has also invited my attention to the complaint and submitted that there are similar averments made in the complaint. It is submitted that though the notice was served on the petitioner, no reply has been given to the said statutory demand notice.

5. In my view, there is a clear averment in the complaint stating that the petitioner was in-charge of the affairs of the partnership firm and that he was responsible for managing day-to-day affairs of the firm. Thus, the submission made by the learned Counsel appearing for the petitioner cannot be accepted. However, this question which is raised by the petitioner in this petition will have to be decided by the Trial Court after the evidence is adduced by both the parties.

6. Petitioner is, however, exempted from appearing in the trial court considering his age which is 67 years and his plea may be recorded through his advocate. The Magistrate will not insist upon his presence unless it is absolutely essential. The learned Counsel for the petitioner undertakes not to dispute the identity of the petitioner.

7. With the above directions, Criminal Writ Petition is dismissed.

V.M. KANADE, J.